



WASHOE COUNTY

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CM/ACM
Finance
DA
Risk Mgt.
HR
Other

STAFF REPORT

BOARD MEETING DATE: April 26, 2016

DATE: April 8, 2016
TO: Board of County Commissioners
FROM: Joey Orduna Hastings, Assistant County Manager
(775) 328-2016, jhastings@washoecounty.us
THROUGH: John Slaughter, County Manager, (775) 328-2000;
jslaughter@washoecounty.us.
SUBJECT: Approval of a uniform process for independent contractor agreements by County Departments, including a six month "cooling off" period for former employees and officials and the use of an independent contractor agreement template. (All Commission Districts)

SUMMARY

Approval of a uniform process for independent contractor agreements by County Departments, including a six month "cooling off" period for former employees and officials and the use of an independent contractor agreement template. (All Commission Districts)

County Priority /Goal supported by this item: Stewardship of our community

PREVIOUS ACTION

On March 24, 2015, the Board of County Commissioners directed the Manager's Office to review the process used by the County to engage independent contractors. The Board requested a uniform approach to the use of independent contractor agreements so as to protect the County and its independent contractors from liabilities, labor violations, and tax implications.

At that meeting, the Commissioners indicated that a "cooling off" may be warranted. A "cooling off" period would require a certain amount of time to pass before a departing employee or official could be contracted with as an independent contractor. The Commissioners requested that County Commissioners also be included in the proposed "cooling off" period when their respective terms come to an end.

AGENDA ITEM # 14

BACKGROUND

Over the years independent contractor agreements have been used to support County operations as needed, typically as permitted by NRS 332.115 (contracts not adapted to award by public bidding). In an effort to develop a uniform approach to the use of independent contractor agreements, the County Manager reviewed other governmental entity's template contracts, policies and procedures. The Manager's office sought input from the offices of Human Resources, the Comptroller, the District Attorney, and Risk Management.

The County Manager proposes the following uniform process for the use of independent contractors:

- A request for an independent contractor agreement will be made to the Purchasing and Contracts Administrator.
- The attached independent contractor agreement template shall be used. The independent contractor agreement template contains an agreement, a scope of work, payment structure and insurance and indemnification requirements. This template may be modified to fit each contract.
- Each contract shall be reviewed and approved by Human Resources, the District Attorney, Risk Management, and the County Manager.
- The Comptroller's Office will develop a system within SAP to monitor and track independent contractor agreements.
- Technology Services will post a list provided by the Comptroller of independent contractors to the County website.

Review and approval of independent contract agreements is designed to protect the County and its independent contractors from liabilities, labor violations, and tax implications. Tax identification numbers, business licenses, and insurance will be required of all independent contractors. Social security numbers may no longer be used in lieu of a business license or a tax identification number because of PERS limitations on retirement earning and the desire to avoid designating independent contractors as "critical labor shortage." The County will no longer waive the insurance requirement unless approved by Risk Management.

In addition to the uniform process for independent contractor agreements, County Management is proposing a six month "cooling off" period before employees, officials, and county commissioners who have left Washoe County service may enter into independent contractor agreements with the County.

County Management reviewed various periods and determined that six months provides a potential contractor with time to get a business license and appropriate insurance. It is also designed to prevent an independent contractor from doing the same work he or she was doing as an employee or official, which is generally prohibited. A one year "cooling off" period might not provide enough flexibility for County needs. In a situation where the six month "cooling off" period cannot be complied with due to an unforeseen operational hardship, a staff report will be submitted by the requestor for approval at Board of County Commission meeting.

FISCAL IMPACT

None at this time.

RECOMMENDATION

It is recommended that the Board of County Commission approve of a uniform process for independent contractor agreements by County Departments, including a six month “cooling off” period for former employees and officials and the use of an independent contractor agreement template. (All Commission Districts)

POSSIBLE MOTION

If the Board of County Commissioners agrees with the staff’s recommendation, move to approve of a uniform process for independent contractor agreements by County Departments, including a six month “cooling off” period for former employees and officials and the use of an independent contractor agreement template.

INDEPENDENT CONTRACTOR AGREEMENT
EXHIBIT A
SCOPE OF WORK

SERVICES TO BE PERFORMED:

Contractor shall perform in a competent and Contractor manner the Scope of Work as follows:

INDEPENDENT CONTRACTOR AGREEMENT

EXHIBIT B

PAYMENT

PAYMENT:

In consideration of the services to be performed by Contractor, County agrees to pay Contractor as follows:

Check all that apply:

- € County agrees to pay Contractor the total sum of \$_____. Such payment will be made in accordance with the following schedule:

- € County shall pay Contractor on a time and expense basis for all the work performed. The hourly rate shall be \$_____.

- € Except as otherwise mutually agreed to by the parties the payments made to Contractor shall not exceed \$_____.

- € Contractor shall submit invoices for work performed _____ (state when invoices are due, example on the 15th of each month). The County shall review such invoices and, if they are considered incorrect or untimely, the County shall review the matter with Contractor within ____ days from receipt of the Contractor's bill.

- € In addition the payment for services, the County shall pay the following:

(Use this to list any specific costs/expenses the County has agreed to pay that are not covered above)

INDEPENDENT CONTRACTOR AGREEMENT
EXHIBIT C
INSURANCE AND INDEMNIFICATION REQUIREMENTS

Washoe County has established specific requirements for agreements with independent contractors to help assure that reasonable insurance coverage is maintained. Indemnification clauses are intended to assure that contractors accept and are able to pay for the loss or liability related to their activities. All conditions and requirements identified in this Exhibit shall be completed prior to the commencement of any work under this Agreement.

1. **INDEMNIFICATION**

1.1 Contractor agrees to indemnify any County Indemnitee for Indemnifiable Losses in any Proceeding arising out of this Agreement alleging:

- 1.1.1 breach or non-fulfillment of any provision of this Agreement by Contractor;
- 1.1.2 any negligent or more culpable act or omission of Contractor (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement;
- 1.1.3 any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Contractor (including any reckless or willful misconduct); or
- 1.1.4 any failure by Contractor to comply with any applicable federal, state or local laws, regulations or codes in the performance of its obligations under this Agreement.

except to the extent that County negligently or intentionally caused those Indemnifiable Losses.

1.2 In this Agreement, the following definitions apply:

- 1.2.1 "Contractor" means the Contractor, its employees, agents, subcontractors or any representatives and each of the heirs, executors, successors, and assignees of any of the foregoing.
- 1.2.2 "County Indemnitee" means the County, its officers, employees, volunteers, and any representatives and each of the heirs, executors, successors, and assignees of any of the foregoing.
- 1.2.3 "Indemnifiable Losses" means the aggregate of Losses and Litigation Expenses.
- 1.2.4 "Litigation Expenses" means any reasonable out-of-pocket expenses incurred in defending a Proceeding or in any related investigation or negotiation, including, but not limited to, court filing fees, court costs, arbitration fees, witness fees, and attorney and other professional fees and disbursements.
- 1.2.5 "Losses" means any amount awarded in, or paid in settlement of, any Proceeding, including any interest but excluding any Litigation Expenses.
- 1.2.6 "Proceeding" means any judicial, administrative or arbitration action, claim, suit, cause of action, demand or investigation.

1.3 County Defenses. County will not waive and intends to assert available defenses and limitations contained in the Nevada Revised Statutes Chapter 41.

1.4 Damages not to Exceed Contract Amount. Actual damages for the County's breach of this Agreement shall never exceed the amount of funds that have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

1.5 Notice of Intent to Seek Indemnification. County Indemnitee shall notify Contractor (a "Claim Notice") of any Losses or discovery of facts on which County intends to base a request for indemnification under Section 1.1. County shall deliver to Contractor a copy of all pleadings and papers with respect to that Proceeding. Failure to provide a Claim Notice to Contractor does not relieve Contractor of any liability.

1.6 Contractor to Assume Defense. Contractor shall notify County Indemnitee of its intent to assume defense of a Proceeding and promptly retain independent legal counsel, reasonably acceptable to the County.

1.7 County Indemnitee Control of Defense. Notwithstanding anything to the contrary in Section 1.6, County Indemnitee may select its own legal counsel to represent its interests, and Contractor shall:

1.7.1 reimburse County Indemnitee for its costs and attorneys' fees immediately upon request as they are incurred; and

1.7.2 remain responsible to County Indemnitee for any Losses and Litigation Expenses indemnified under Section 1.1.

1.8 Payment of Litigation Expenses. Contractor shall pay any Litigation Expense that a County Indemnitee incurs in connection with defense of the Proceeding before the Contractor assumes the defense of that Proceeding.

1.9 Settlement by Contractor. Contractor shall obtain County Indemnitee's approval prior to settlement of any Proceeding. Approval must be in writing.

2. INSURANCE

2.1 Contractor's Insurance – General Requirements.

2.1.1 Contractor agrees to maintain insurance sufficient to insure against obligations under this agreement and as required by law.

2.1.2 Failure to maintain insurances does not relieve Contractor of its obligations under this agreement.

2.1.3 The cost of all insurance shall be borne by Contractor.

2.1.4 Contractor shall cause any subcontractor to maintain the specific insurance coverages listed in Section 2.2.

2.1.5 In the case of any *claims-made* policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain continuous coverage.

2.2 Specific Insurance Requirements. Contractor agrees to maintain insurance:

2.2.1 Industrial Insurance: There shall be no Industrial Insurance coverage provided by County for Contractor or any of its Sub-contractors. Contractor is responsible for providing insurance and agrees to provide County with a certificate issued by an insurer in accordance with NRS 616B.627 and NRS 617.210 as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the County to make any payment under this Agreement.

1.2.1.1 The Industrial Insurance requirement may be waived for a sole proprietor who does not use the services of any employees, subcontractors, or independent contractors and completes an Affirmation of Compliance pursuant to NRS 616B.627.

1.2.1.2 Should Contractor be self-funded for Industrial Insurance, Contractor shall notify County in writing prior to the signing of the agreement. County reserves the right to approve said retentions and may request additional documentation for review prior to the signing of any agreement.

€ The Industrial Insurance requirement is waived by Risk Management____(initials)

2.2.2 General Liability: Contractor agrees to maintain insurance in the amount of \$1,000,000 per claim for bodily injury, personal injury and property damage.

2.2.2.1 If insurance with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.

2.2.2.2 The policy shall be endorsed to include the County, its officers and employees as additional insureds.

2.2.2.3 The policy shall not contain any exclusion for bodily injury or property damage arising from completed operations.

€ The General Liability Insurance requirement is waived by Risk Management____(initials)

2.2.3 Automobile Liability: Contractor agrees to maintain insurance in the amount of \$1,000,000 combined single limit per claim for bodily injury and property damage. No aggregate limit may apply.

€ The Automobile Insurance requirement is waived by Risk Management____(initials)

2.2.4 Errors and Omissions Liability: Contractor agrees to maintain insurance in the amount of \$1,000,000 per claim and as an annual aggregate.

2.2.4.1 Contractor shall maintain liability insurance during the term of this Agreement and for a period of three years from the date of substantial completion of the project. In the event that Contractor goes out of business, Contractor shall purchase Extended Reporting Coverage for claims arising out of Contractor's negligent acts, errors and omissions committed during the term of the Liability Policy.

2.2.4.2 Should the parties agree that higher coverage limits are needed warranting a project policy, project coverage shall be purchased and the premium for limits exceeding the above amount shall be borne by County. County retains the option to purchase project insurance from any source.

The Errors and Omissions Insurance requirement is waived by Risk Management_____(initials)

2.3. Requirements applicable to all insurance policies.

2.3.1 Every policy required above shall be primary insurance.

2.3.2 Any insurance available to the County shall be excess and not contributory insurance.

2.3.3. The Contractor shall be solely responsible for any deductible losses under any policy required above.

2.4 Verification of Coverage. Contractor shall provide County with certificates of insurance and with original endorsements affecting coverage required by this exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. County reserves the right to review all required insurance policies at any time.

2.5 Failure to Maintain Insurance. In addition to any other remedies County may have if Contractor fails to maintain the required insurance policies or policy endorsements, County may, at its sole option:

2.5.1 Order Contractor to stop work, and/or

2.5.2. Withhold any payments until Contractor demonstrates compliance with the insurance requirements, and/or

2.5.3 Terminate the Agreement.

2.6 County's Insurance. Washoe County, through its Risk Management Division, has established a Self-insurance Program. This Program follows substantially the same format as that of commercial insurance coverage for property losses and third party liability claims.

2.6.1 The County self-funds its property losses up to \$50,000 per loss, and has commercial "all risk" coverage above that amount.

2.6.2 All liability actions against the County are handled in accordance with Nevada Revised Statutes, Chapter 41. The County has \$5,000,000 of excess liability insurance, with a \$1,500,000 self-insured retention.

2.6.3 Washoe County is authorized as a Self-Insured Employer for Workers' Compensation by the Nevada Commissioner of Insurance, certificate number 36.

CM/ACM___
Finance ___
DA___
Risk Mgt. ___
HR___
Other___

**INDEPENDENT CONTRACTOR AGREEMENT
FOR SERVICES**

This Agreement is made by and between Washoe County, a political subdivision of the State of Nevada, (County), and _____, (Contractor).

1. SERVICES TO BE PERFORMED

A. Scope of Work. Contractor shall perform in a competent manner the Scope of Work as set forth at Exhibit A attached to this Agreement and incorporated by reference.

B. Completion. Contractor shall commence work immediately upon receipt of written notice to proceed from the County and complete all phases of the Scope of Work with skill and care and in a timely manner. The parties anticipate that all work pursuant to this Agreement shall be completed no later than _____, unless this Agreement is terminated sooner in accordance with its terms.

2. PAYMENT

A. Payment Schedule. In consideration of the services to be performed by Contractor, County agrees to pay contractor as set forth in Payment Schedule at Exhibit B attached to this Agreement and incorporated by reference.

B. Contractor pays Expenses. Contractor shall be responsible for expenses incurred while performing services under this Agreement. This includes, but is not limited to, license fees; memberships and dues; automobile and other travel expenses; meals and entertainment; insurance premiums; and all salary, expenses and other compensation paid to Contractor's employees or contract personnel Contractor hires to complete the work under this Agreement. Any expenses to be paid by County are listed in Exhibit B along with an explanation of why the County is responsible for the expenses.

3. INDEPENDENT CONTRACTOR STATUS AND CERTIFICATION

Contractor is an independent contractor, not a County employee. Contractor's employees or contract personnel are not County employees. Contractor and County agree to the following rights consistent with an independent contractor relationship:

A. Contractor has the sole right to control and direct the details and methods by which the services required by this Agreement are performed, including the hours of work.

B. Neither Contractor nor Contractor's staff shall receive any training from County in the skills necessary to perform the services required by this Agreement.

- C. Contractor has the right to perform services for others during the term of this Agreement. County shall not require Contractor to devote full time to performing the services required by this Agreement.
- D. Contractor has the right to hire assistants and subcontractors to provide the services required by this Agreement. County shall not hire, supervise or pay any staff to assist Contractor.
- E. Contractor will furnish all equipment and materials used to provide the services required by this Agreement. Unless otherwise provided in Exhibit B, Contractor is responsible for all expenses without reimbursement.
- F. Contractor shall not be assigned a work location on County premises, and Contractor has the right to perform the services required by this Agreement at any place, location or time.
- G. Neither Contractor nor any sub-contractors are employees of County and waive any and all claims to benefits otherwise provided to employees of the County, including, but not limited to, medical, dental, or other personal insurance, Nevada Public Employees Retirement System (PERS) or other retirement benefits, unemployment benefits, and liability and worker's compensation insurance.
- H. Contractor agrees to provide County with a copy of contractor's business license, or with a copy of the notice of exemption from the Nevada Secretary of State. Contractor must also provide County with the Employer Identification Number (EIN) issued to the business by the Internal Revenue Service on the required Form W-9. The County will not accept a social security number in lieu of an EIN.
- I. Contractor is solely responsible for federal taxes and social security payments applicable to money received for services provided. Contractor understands that the County complies with the requirements of the Internal Revenue Service for the reporting of miscellaneous income on Form 1099-MISC, and that amounts paid to Contractor will be reported to the IRS accordingly.
- J. Contractor agrees to provide County with certificates of insurance as listed in the Indemnification and Insurance provisions attached as Exhibit "C" to this Agreement and incorporated by reference.
- K. Contractor understands and agrees that the Employees' Retirement System of the State of Nevada (PERS), NRS Chapter 286, and PERS official policies limit or prohibit PERS retirees' ability to receive compensation for work performed for public employers such as Washoe County. PERS official policies require that County notify PERS of retirees who accept employment or an independent contract. If Contractor is a PERS retiree, it is Contractor's responsibility to seek advice from PERS and/or independent legal counsel regarding earnings restrictions. Contractor agrees that County shall not be liable for PERS benefits of any kind which may be lost or forfeited as a result of work performed by Contractor pursuant to this Agreement. Contractor is / is not (circle correct response) currently a retired member of the PERS ____ (initials here).

4. INDEMNIFICATION AND INSURANCE

Washoe County has established specific indemnification and insurance requirements for agreements with independent contractors to help assure that reasonable insurance coverage is maintained. Indemnification clauses are intended to assure that contractors accept and are able to pay for the loss or liability related to their activities. Insurance and Indemnification requirements are set forth in Exhibit C of this Agreement and incorporated by reference. All conditions and requirements identified in Exhibit C shall be completed prior to the commencement of any work under this Agreement.

5. OWNERSHIP OF PRODUCTS/DOCUMENTS

Contractor assigns to County all rights to all products, reports, documents, photographs, videos, data, and drawings produced by Contractor as a result of its services to County during the term of this Agreement.

6. BACKGROUND INVESTIGATION

If required by County, Contractor and any of its subcontractors or employees agree to submit to a full background investigation prior to the performance of any services under this Agreement, which may include but is not limited to, a criminal history check and fingerprinting. Any costs associated with the background investigation shall be paid by Contractor. The discovery of an undisclosed criminal conviction may be grounds for immediate termination of this Agreement without prior notice by the County, as may the conviction of Contractor during the term of the Agreement of any criminal offense.

7. TERMINATION OF AGREEMENT

This Agreement may be terminated for any reason by either party by giving the other party written notice of the intent to terminate. The notice must specify a date upon which the termination will be effective, which date may not be less than 10 calendar days from the date of service of the notice.

Only services satisfactorily performed up to the date of receipt of notice shall be compensated by County and such compensation shall be pursuant to the terms of this Agreement.

Notwithstanding the above, Contractor shall not be relieved of any liability to the County for damages sustained by the County by virtue of any breach of this Agreement by the Contractor, and the County may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the County from the Contractor may be determined.

8. MISCELLANEOUS PROVISIONS

A. Choice of Law. This Agreement shall be construed and interpreted according to the law of the State of Nevada.

B. Funding Out Clause. In the event that the County fails to obligate requisite funds for the ensuing year(s) for payment of the amount against this Agreement, necessitating cancellation of the Agreement, the Contractor shall agree to hold the County free from any charges or penalties except for those already incurred through the date of notice of cancellation.

C. Compliance with Laws. Contractor agrees to comply with all applicable laws, ordinances and regulations of the governmental entities having jurisdiction over matters that are the subject of this Agreement. Contractor shall comply with all federal, state and local laws requiring business

permits, certificates and licenses required to carry out the services to be performed under this Agreement.

D. Assignment. Contractor may not assign or subcontract any rights or obligations under this Agreement without County's prior written approval.

E. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and may only be modified by a written amendment signed by the parties hereto.

F. Notice. Notices and other communications in connection with this Agreement shall be in writing. Email or facsimile may be used to provide notice and shall be considered given on the date the notice is sent to the recipient's address as stated in this Agreement.

County:
Contact: _____
Email: _____

Contractor:
Contact: _____
Email: _____

Facsimile: _____

Facsimile: _____

G. Non-Discrimination. No discrimination because of race, color, sex, marital status, affectional or sexual orientation, family responsibility, national origin, ancestry, handicap, or religion shall be made in the employment of persons to perform services under this contract. Contractor agrees to meet all of the requirements of Washoe County Code, Section 5.343 (Prohibition against Discrimination).

H. Waiver. The waiver by the County of the provisions of this Agreement shall not operate as a waiver unless explicitly set forth in writing and signed by County. Forbearance or indulgence by the County in any regard to the exercise of any provision shall not constitute a waiver of any provision to be performed by Contractor. Until complete performance by Contractor of the provisions of the Agreement, the County shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

Contractor	Washoe County
By: _____	By: _____
Dated: _____	Dated: _____
Name: _____	Name: _____
Address: _____ _____	Address: _____ _____
Email: _____	Email: _____
Fax: _____	Fax: _____